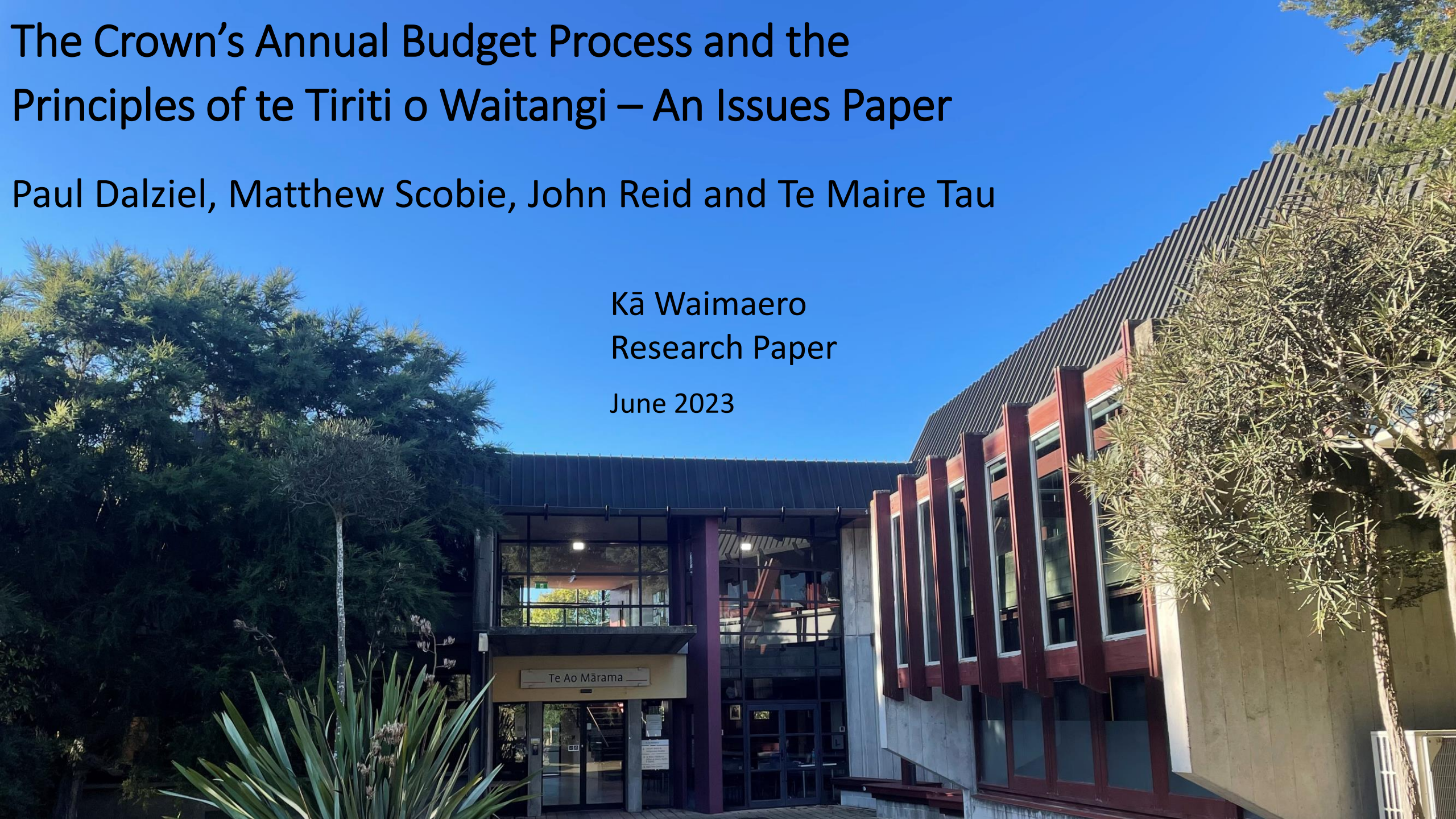


The Crown's Annual Budget Process and the Principles of te Tiriti o Waitangi – An Issues Paper

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Kā Waimaero
Research Paper

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Key Messages



- These islands have been a place of arrivals since Māori first settled here in the 13th century and Europeans first landed onshore some 500 years later. Today, more than 1 in 4 New Zealand residents were born overseas.
- Te Tiriti o Waitangi 1840 is a solemn agreement between Māori and the Crown giving rise to reciprocal duties for mutual benefit. The Crown guarantees that Māori will exercise *tino rangatiratanga* over Māori assets.
- Colonisation trampled on this guarantee. The Crown dispossessed Māori of whenua (land), wai (waters) and mahinga kai (food gathering places), creating a legacy of intergenerational trauma.
- Since the Treaty of Waitangi Act 1975 established the Waitangi Tribunal, the Crown has committed itself in legislation to honour the Principles of the Treaty. The Courts have enforced this legal commitment.
- Every year, the Crown's Budget has profound implications for the exercise of *tino rangatiratanga* by Māori, as evidenced in the economic reforms of 1984 to 1994. The Budget is prepared under strict Budget secrecy.
- This raises important questions. How does the Budget process impact on the guarantee that Māori will exercise *tino rangatiratanga*? How does the process reflect the Crown's solemn commitment to respect the principles of the Treaty? How does it leverage opportunities for collaboration with Māori for mutual benefit?
- The second phase of this research project will consult widely to address these and related questions.

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Introduction

Introduction



On [Budget Day](#) every year, the Minister of Finance delivers to Parliament the Crown’s financial accounts, including details of its planned revenue and spending. A long-standing convention means the Budget is prepared in **secrecy**.

The Crown recognises that its honour as a Tiriti o Waitangi partner imposes solemn duties. The Crown, for example, has legally committed itself to respect Treaty principles such as **partnership**, **protection** and **participation**.

Further, the Crown recognises that Māori exercise **kaitiakitanga**, or guardianship in accordance with tikanga or customary values and practices, in relation to natural and physical resources (Section 2 of the [Resource Management Act 1991](#)).

Kaitiakitanga is an example of how collaboration between the Crown and Māori, including respectful access to **mātauranga** (knowledge) held by Māori communities, can create **mutual benefit** in diverse policy settings.

This Issues Paper begins to address an obvious question: *Are the strict requirements for Budget secrecy limiting the Crown’s commitment to Treaty principles or restricting its ability to access mātauranga Māori for mutual benefit?*

The paper focuses on key elements in our colonisation history and in the exercise of **tino rangatiratanga** (fullness of control) by Māori. These elements provide strong foundations for identifying options for reform.



Arrivals

Māori arrivals

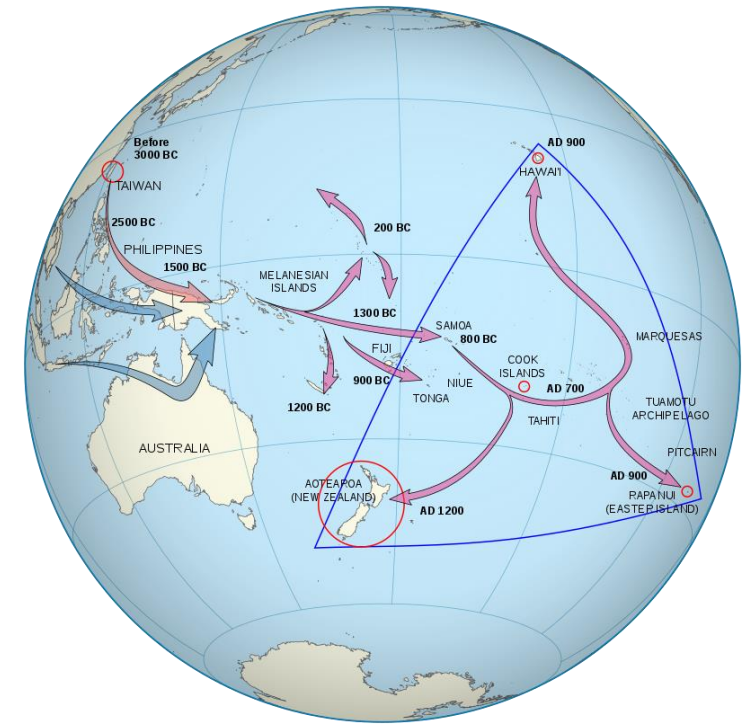


The human species emerged in Africa and from there migrated to all parts of the planet over many centuries. About 3,000 years ago, humans reached Oceania.

The vast ocean was a significant barrier, but Māori ancestors created the mātauranga needed to voyage successfully across the Pacific, reaching South Polynesia sometime during the thirteenth century (see [Land of Voyagers](#)). Māori settled throughout the islands of Aotearoa.

Māori developed a tribal culture, with tribes belonging to particular takiwā or places. Connection to **whenua** (land) is fundamental. A Māori community exercises **mana whenua** (authority, jurisdiction) over its takiwā. Collectively, Māori are **tangata whenua**, or people of the land.

By the late 18th century, the Māori population was around 90,000. Life expectancy was about 25-30 years, similar to much of Europe at that time.



Source: David Eccles (Gringer (talk)) downloaded from [Wikimedia Commons](#) under Creative Commons Attribution 4.0 International [CC BY 4.0](#).

First European Arrivals



In December 1642, two Dutch East India Company ships led by Abel Tasman anchored in Taitapu, now called Golden Bay. The crew did not come onshore, but this short visit led a Dutch map maker to name the territory in Latin as Nova Zeelandia. In English this became **New Zealand**.

It was more than a century before the next European visitors. In October 1769, the *Endeavour*, captained by James Cook, landed at Tūranganui-a-Kiwa (Poverty Bay).

Just two months later, the French vessel *St Jean Baptiste*, captained by Jean-François-Marie de Surville, reached Tokerau (Doubtless Bay).

During these early encounters, “the puzzlement and perplexity experienced by both sides proved frustrating and sometimes fatal” (Salmond 1991, p. 431).

By the end of the 18th century, expeditions from Australia were harvesting seals and Europeans were arriving to settle.

By 1830, the number of Europeans living in the country was over 300 and growing. By the end of the decade, the European population would pass 2,000.



Endeavour, on New Zealand’s 50 cent coin.
Source: [Reserve Bank of New Zealand](https://www.reservebankofnz.govt.nz/coins-and-notes/50-cent-coin).

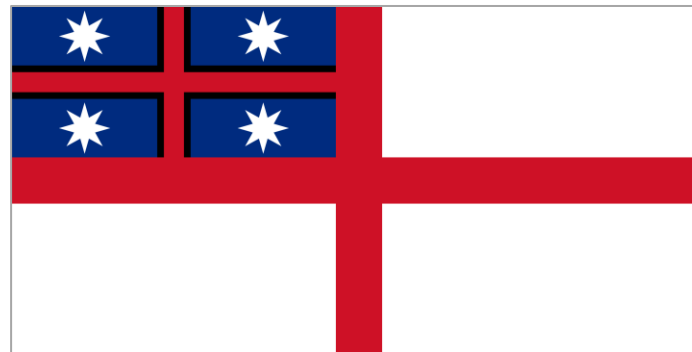
Declaration of Independence, 1835



In 1831, 13 northern Māori chiefs sent a petition to the King of England, King William IV. Among other things, it asked for protection from lawless British subjects.

In May 1833, northern Māori welcomed the arrival of James Busby, appointed by the Crown as British Resident. Busby settled at Waitangi. He represented British law and order.

In March 1834, Busby arranged for northern rangatira (chiefs) to come together at Waitangi. The meeting selected a [United Tribes Flag](#) to be used for shipping purposes.



The United Tribes Flag chosen at Waitangi, March 1834.

On 28 October 1835, Busby called another meeting to invite rangatira to sign **He Whakaputanga o te Rangatiratanga o Nu Tireni** – the [Declaration of Independence](#) of the United Tribes of New Zealand.

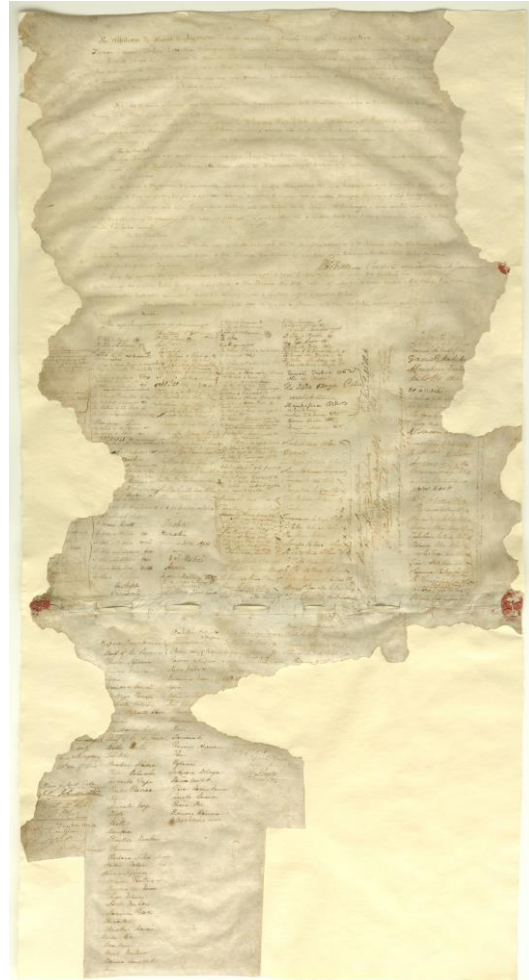
34 northern Māori rangatira did so on that day, with a further 18 signatures added in other parts of the country by 1839.

Te Tiriti o Waitangi, 1840



In February 1840, Busby invited northern rangatira to gather a third time at Waitangi. Lieutenant Governor William Hobson had arrived with instructions to treat with the aborigines of New Zealand for recognition of Her Majesty's sovereign authority.

Hobson and Busby drafted a Treaty in English, which Henry Williams (a missionary) and his son, Edward, translated into te reo Māori. More than 40 rangatira signed the Māori text on 6 February 1840.



Further signatures were added at Mangungu 6 days later, and then at locations around the country over following months. Some important rangatira declined to sign te Tiriti; nevertheless, the total number of signatures made in 1840 exceeded 500.

The Māori and English texts can be read on the website of Archives New Zealand [here](#). The image to the left is the original Tiriti signed at Waitangi. It is reproduced from the same Archives website.

Current Day Arrivals

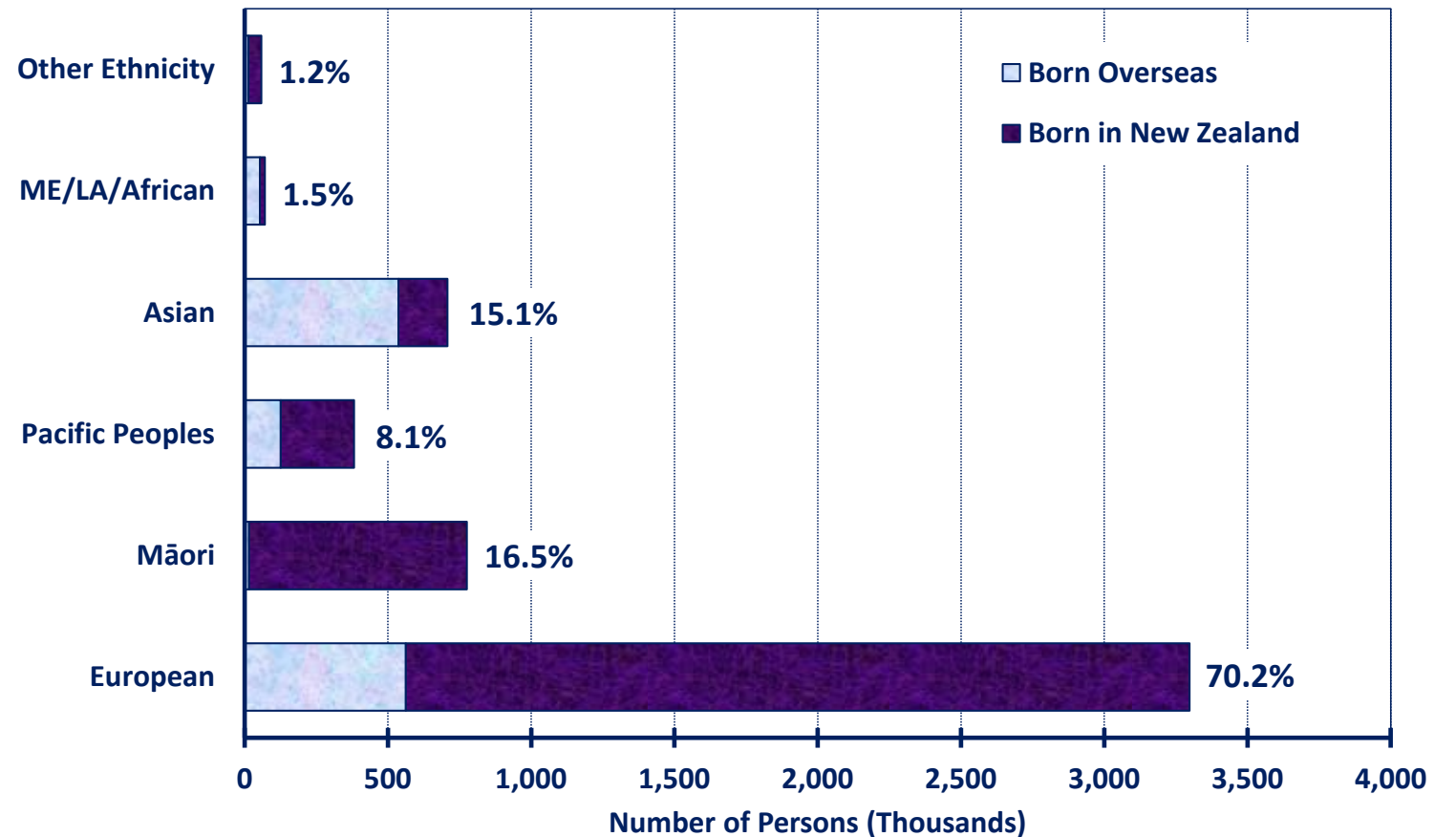


Aotearoa New Zealand continues to be a country of arrivals.

In the 2018 Census, more than 1 in 4 people usually resident in New Zealand reported they had been born overseas (27.1 per cent).

In that Census, 16.5 per cent of the population identified themselves as Māori and 70.2 per cent as European. The 2018 Census also reflected significant migrations from the Pacific and from Asia.

New Zealand Residents by Ethnicity, 2018 Census





Colonisation

Systematic Colonisation



A key reason for the British Crown to promote the Tiriti o Waitangi was the move by Edward Gibbon Wakefield and supporters to form the **New Zealand Company** with the purpose of organising systematic colonisation.

An advance party of New Zealand Company representatives arrived on the *Tory* in August 1839. The first ship to arrive with settlers was the *Aurora*. It landed on 22 January 1840, two weeks before the Tiriti gathering at Waitangi.

The Company's activities increased the inflow of colonists. Phillips (2015) records that about 18,000 settlers arrived directly from Britain between 1840 and 1852. Of these, about 14,000 were associated with the New Zealand Company and its two offshoots, the Otago Association and the Canterbury Association.

By 1858, colonists outnumbered the Māori population. That advantage increased with further waves of migration.



[Stamp of New Zealand Company settlers arriving in Pito-one \(Petone\).](#)
[CC BY 2.0.](#) Archives New Zealand Ref: AAME 8106 W5603 Box 291.

Colonisation and Whenua



Organised colonisation depended on the colonists taking control of whenua. This began by imposing the European legal system under which land is turned into private titles that establish ownership.

The legal titles are tradable; hence, this practice brings whenua *within* the market economy. A European scholar later described this change as a **great transformation**, in which “the social and cultural system of native life must be first shattered” (Polanyi 1944, p. 188).

To finance colonisation, whenua had to be obtained cheaply for resale at a higher price to arriving colonists (Comyn 2019).

Ngāi Tahu scholar Simon Barber describes this process in the quote below. **Māori were required to fund their own colonisation.**

“For the scheme to work, the land would have to be acquired from Māori for very little. Māori land, through its appropriation and sale, would fund the entire venture. *Māori were to fund their own colonisation*. Wakefield was able to cast this blatant injustice in a golden light. As with many contemporaries, Wakefield felt that Māori land had no value. Value could only be conferred by European capital in its conversion of the land to monetary value.”

– Simon Barber (2020, p. 236)

Conquest by Contract



Following te Tiriti o Waitangi, the first large-scale transfers of whenua were in the South Island, where the Ngāi Tahu population was quickly surpassed by settlers.

“Our people expected that our Treaty partner would proceed in the spirit of the Treaty to protect and support our Rangatiratanga over our property rights, but instead, these rights were removed.”

– Rakihia Tau,

Cited in Waitangi Tribunal (1991, p. xvii)

Between 1844 and 1864, [ten transactions](#) between the Crown and Ngāi Tahu rangatira resulted in **34.5 million acres** being purchased by the Crown.

[Kemp’s Deed](#) in 1848 was the largest transaction. It involved 13.5 million acres in Canterbury.

Each purchase included agreement about lands reserved from the sale and promises on how Ngāi Tahu would share benefits from the European settlement.

Again and again, the Crown failed to honour these agreements and promises.

Thus, Ngāi Tahu were denied the promised resources to participate equally in the new world being created, despite decades of protests beginning in 1849.

Stuart Banner (2000) calls this **conquest by contract**.

Mahinga Kai



An example of the failure by the Crown to honour agreements is the loss of access to places where food was produced or gathered by Ngāi Tahu – their **mahinga kai**. These places were essential in the Ngāi Tahu economy.

Kemp's Deed, which was written in te reo Māori, promised to reserve to Ngāi Tahu their residences (kainga nohoanga) and their mahinga kai for themselves and for their descendants (cited in Waitangi Tribunal 1991, p. 489).

The Crown failed to honour this promise. Minimal land reserves were set aside. The destruction or pollution of natural ecosystems (e.g., wetlands, forests, lakes and

streams) impoverished Ngāi Tahu's economic prosperity and political independence. In the quote below, the Waitangi Tribunal records the impact on rangatiratanga.

“The Crown, through its agents, rode roughshod over Ngāi Tahu's rangatiratanga, over their right to retain land they wished to keep, over their authority to maintain access to their mahinga kai. Instead of respecting, indeed protecting Ngāi Tahu's rangatiratanga, the Crown chose largely to ignore it. In so doing it acted in breach of an important Treaty obligation, and has continued to so act down to the present time.”

– Waitangi Tribunal (1991, p. 502)

Settler Government



In 1852, the UK Parliament passed the [New Zealand Constitution Act](#). This created self-government in the colony of New Zealand, involving six Provincial Councils and a central government.

The Act set rules for who could vote. Voters were to be male, aged 21 years or older, and owners or leasees of property worth more than minimum values set out in the Act. The property test meant most Māori could not vote, producing a settler government.

The New Zealand Constitution Act did not mention Te Tiriti directly, but there were echoes. Indeed, the very idea that the British Crown had authority to design institutions of government in the distant colony drew on Article 1.

Further, the Act allowed only the Crown to purchase land from Māori and it forbade restrictions on Māori that were not required of Europeans. These clauses were consistent with provisions in Articles 2 and 3 of Te Tiriti.

Section 71 of the Act permitted the creation of districts where Māori laws, customs and usages would have been observed. This power was never used.

Crucially, the Act ignored the Article 2 promise made to Māori *guaranteeing* the full, exclusive and undisturbed possession of their Lands and Estates, Forests, Fisheries and other properties which they may collectively or individually possess – expressed in te Tiriti as **tino rangatiratanga**.

Kīngitanga



Many historians describe the New Zealand Constitution Act as “the point at which relations between Māori and Pākehā really began to turn sour” (O’Malley 2016, p. 61).

Māori continued to assert tino rangatiratanga in the face of the new settler government. This included focusing on local **rūnanga**, or assemblies, where Māori communities could promote self-government and coordinate resistance to the rising hostility of settlers.

Following the passing of the New Zealand Constitution Act in 1852, Tamehana Te Rauparaha and Matene Te Whiwhi travelled in the central North Island, calling for the selection of a king to bind Māori together and to oppose land sales.

A large gathering at Manawapou in South Taranaki agreed in 1854 to cease selling land to Europeans. In 1856, a gathering at Pūkawa on the western shore of Lake Taupō added further impetus to the **Kīngitanga** movement.

After further discussions and some dissent about the name of the position, **Pōtatau Te Wherowhero** accepted the title of King at a hui in June 1858. A second ceremony at Ngāruawāhia, on 2 May 1859, confirmed his appointment.

Pōtatau died the following year. His son, **Tāwhiao Te Wherowhero**, was appointed king on 5 July 1860, again at Ngāruawāhia, just four months after imperial troops had marched on Waitara in Taranaki.

Raupatu



The growing settler demand for whenua could not be met from voluntary sales. The government turned to military strength to force alienation of lands in Taranaki, Waikato and elsewhere.

In March 1860, the government sent 400 imperial troops to enforce possession of lands at Waitara in Taranaki. Over the next decade, around **12,000 men** from British imperial regiments and the Royal Navy fought Māori in New Zealand (see www.soldiersofempire.nz/).

The New Zealand Settlements Act 1863 allowed the confiscation of lands from Māori ‘in rebellion’.

This raupatu, or confiscation, saw **1.6 million hectares** taken from Māori for distribution to settlers.

“Following the Waikato War of July 1863 to April 1864, the once flourishing Waikato Māori economy stood in ruins – with villages destroyed, crops razed and livestock looted. An area that just a few years earlier had been a hub of colonial commerce, exporting produce to New South Wales, Victoria and even California, lay waste. Worse still, hundreds of Waikato Māori had been killed, and many more were left crippled or wounded. ... The most valuable lands had been seized by the government for transfer to settlers. For the Waikato tribes, life would never be the same again.”

– Vincent O’Malley (2016, pp. 10-11)

Native Land Court



Dame Claudia Orange writes, “In the years after the wars, the most serious attack on the vitality of Māori life came from the Native Land Court” (Orange 2004, p. 80). This was due to its role converting Māori land into freehold land for purchase or lease by Europeans.

Indeed, Sir Hugh Kāwharu labels the system of Māori land tenure created by the Native Lands Act 1865 as an “engine of destruction for any tribe’s tenure of land, anywhere” (Kāwharu 1977, p. 15).

“After the wars, about 1.6 million acres (650,000 hectares) of Māori land were taken through confiscation; the Native Lands Act 1865 and the work of the Native (later Māori) Land Court led to far more land being lost, and eventually affected all tribes. Subsequent amendments compounded the problems, and caused even tough politicians to reconsider their actions. Various remedies were suggested, but most did not find their way into legislation; where they did, they were often circumvented by presiding judges who disagreed with government officials.”

– Claudia Orange (2004, p. 80)

Integration Policies



Māori initiatives at the turn of the century sought to draw on settler knowledge to advance Māori wellbeing. An example is the work of the [Young Māori Party](#), led by rangatira such as James Carroll (Ngāti Kahungunu), Apirana Ngata (Ngāti Porou), Māui Pōmare (Ngāti Mutunga, Ngāti Toa) and Te Rangi Hīroa (Ngāti Mutunga).

In 1945, nearly three-quarters of the Māori population were living in rural districts. This changed very quickly, within a single generation.

Thus, by the time of the 1971 Census, 71 percent of Māori were living in cities and towns.

The migration to cities and towns was vigorously supported by government policy, guided by the **Hunn Report**, 1960.

David Williams (2019) explains how the report called for public policies that would place pressure on Māori to be ‘modern’, despite recognising the resentment this would cause.

Hunn called this approach ‘integration’, but the goal was assimilation in all but name.

“The State Advances Corporation and the Department of Māori Affairs worked together to intermingle Māori and European homes so that, as far as possible, Māori families had no immediate Māori neighbours and no Māori communal facilities were built in the new suburbs.”

– David Williams (2019, p. 39)

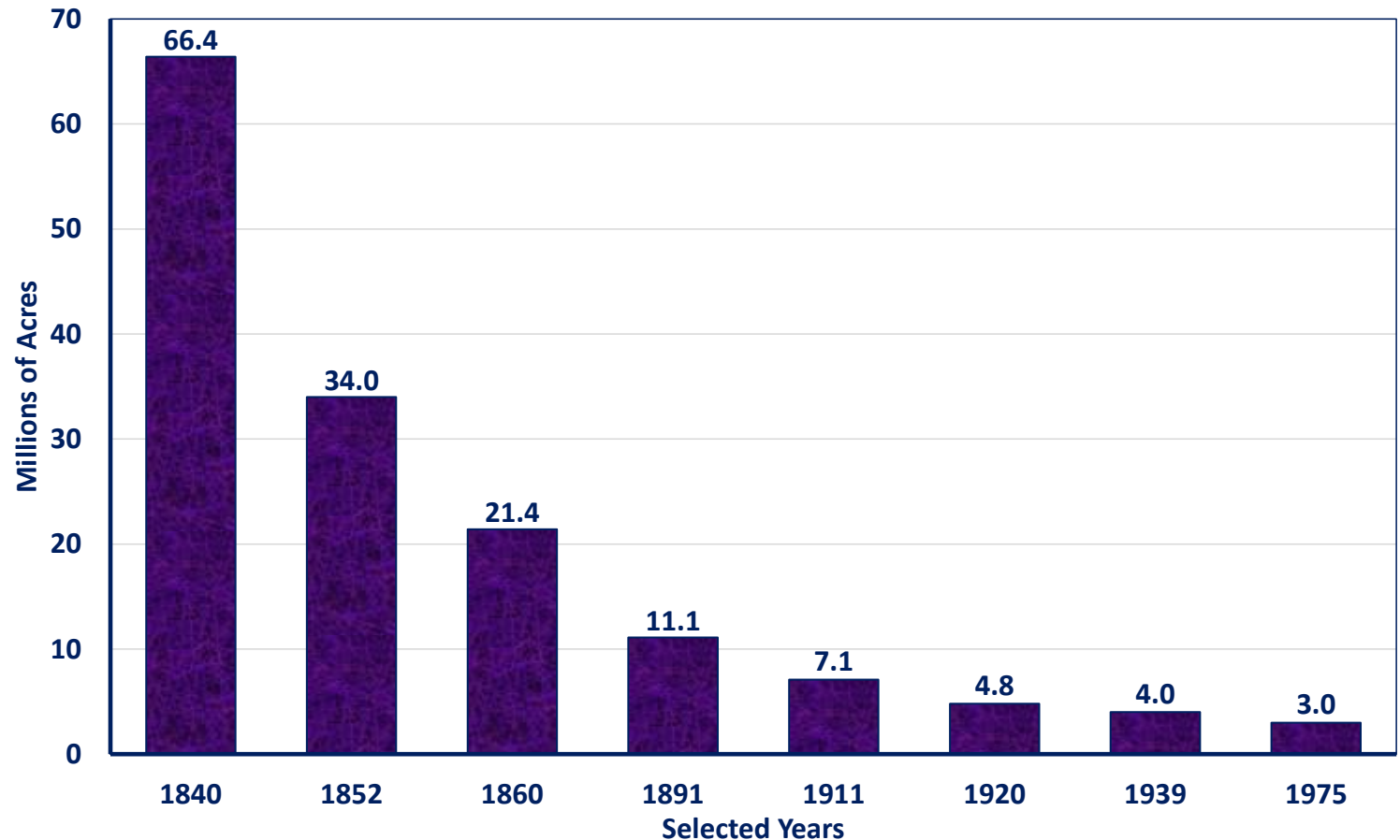
Dispossession



In 1987, the New Zealand Planning Council published a report on *Māori Land*. It summarised events dispossessing Māori land, showing the amount of land still in Māori title at key dates.

The amount had almost halved by the time of the New Zealand Constitution Act 1852. Eight years later, it was less than a third. In 1975, land held in Māori title had been reduced to 3 million acres, less than 5 per cent of the total (a visualisation is available [here](#)).

Amount of Land in Māori Title



Source: Asher and Naulls (1987, Appendix)

Intergenerational Trauma



“In the simplest sense colonisation is the violent denial of the right of Indigenous peoples to continue governing themselves in their own lands” (Jackson 2020, p. 133).

Consequently, “colonisation has wrought an unremitting and continuous process of historical trauma upon tangata whenua that is reflected in disparities between Māori and settler peoples in most important areas of contemporary life” (Moewaka Barnes and McCreanor 2019, p. 28).

The Whenua Project at the Ngāi Tahu Centre explores the trauma of colonisation to search for culturally relevant ways to support Māori

health and well-being. A key message from its major [report](#) is summarised in the quote below (see also Thom and Grimes [2022](#)).

“Thus, the treatment of trauma caused by colonisation needs to be directed across many levels, from the national to the regional to the iwi to the hapū to the whānau to the individual across the political, economic, legal and social spheres. In addition to addressing the structural biases of the settler state, Māori also need to create coherent, strong social identities that balance historical fidelity with inclusiveness and, crucially, are able to create and maintain a positive self-concept for all Māori.”

– Reid, Rout, Tau and Smith (2017, pp. 150-151)



Tino Rangatiratanga

Not One More Acre



On 14 September 1975, a hīkoi known as the [Māori Land March](#) set out from the Te Reo Mihi marae at Te Hāpua, the most northerly settlement in Aotearoa. It arrived at Parliament on 13 October.

The hīkoi described itself as a climax to more than 150 years of frustration and anger over the continuing alienation of Māori lands.

It united around the demand of “**Not One More Acre**”.

There had been protests before the 1975 Māori Land March and more would come. Nevertheless, this hīkoi was a public event that coincided with profound debates in Aotearoa New Zealand about relationships between Māori and the Crown.

Indeed, the Land March arrived at Parliament just three days after the Governor General gave [Royal assent](#) to the Treaty of Waitangi Act 1975. That Act established the **Waitangi Tribunal**.



[Participants in Māori Land March leaving Te Reo Mihi Marae, Te Hapua](#). Heinegg, Christian F, 1940- : Photographs of the Māori Land March. Ref: 35mm-87491-16-F. Alexander Turnbull Library, Wellington.

The Waitangi Tribunal



When Hon Matiu Rata (Minister of Māori Affairs) in November 1974 introduced the Treaty of Waitangi Bill to Parliament, he explained:


“The Bill is primarily aimed at satisfying honour. It will also give physical and lawful sustenance to the long-held view that the spirit of the treaty more than warrants our county’s continued support.”

The [Treaty of Waitangi Act 1975](#) became law the following year. It established the [Waitangi Tribunal](#)

“to make recommendations on claims relating to the practical application of the principles of the Treaty and, for that purpose, to determine its meaning and effect and whether certain matters are inconsistent with those principles”.

The Tribunal is a commission of enquiry. It considers evidence on specific claims that the Crown is acting or has acted in a way that is inconsistent with **the principles of the Treaty**. It can recommend (but not enforce) possible remedies.

1975, No. 114 *Treaty of Waitangi* 825



ANALYSIS

1. Short Title	6. Jurisdiction of Tribunal to consider claims
2. Interpretation	7. Tribunal may refuse to inquire into claim
3. Act to bind Crown	8. Jurisdiction of Tribunal to consider proposed legislation
4. Waitangi Tribunal	9. Right to petition Parliament unaffected
5. Functions of Tribunal	Schedules

1975, No. 114

An Act to provide for the observance, and confirmation, of the principles of the Treaty of Waitangi by establishing a Tribunal to make recommendations on claims relating to the practical application of the Treaty and to determine whether certain matters are inconsistent with the principles of the Treaty [10 October 1975]

WHEREAS on the 6th day of February 1840 a Treaty was entered into at Waitangi between Her late Majesty Queen Victoria and the Maori people of New Zealand: And whereas the text of the Treaty in the English language differs from the text of the Treaty in the Maori language: And whereas it is desirable that a Tribunal be established to make recommendations on claims relating to the practical application of the principles of the Treaty and, for that purpose, to determine its meaning and effect and whether certain matters are inconsistent with those principles:

BE IT THEREFORE ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

B—1

The *Lands Case* 1987



In 1987, the Government proposed to pass about 10 million hectares of land owned by the Crown to enterprises established under the State-Owned Enterprises Act 1986.

The New Zealand Māori Council argued in the Court of Appeal that the proposal was contrary to Section 9 of the State-Owned Enterprises Act, which stated *“Nothing in this Act shall permit the Crown to act in a manner that is inconsistent with the principles of the Treaty of Waitangi.”*

The five judges were unanimous that a transfer of lands would be inconsistent with the principles of the Treaty without safeguards to

protect Māori rights in future Waitangi Tribunal claims. Their decision recognised a Treaty-based duty of **utmost good faith**:

“The Treaty signified a partnership between Pākehā and Māori requiring each to act towards the other reasonably and with the utmost good faith. The relationship between the Treaty partners creates responsibilities analogous to fiduciary duties. The duty of the Crown is not merely passive but extends to active protection of Māori people in the use of their lands and waters to the fullest extent practicable. That duty is no light one and is infinitely more than a formality.”

– New Zealand Māori Council v Attorney-General [1987] 1 NZLR, 642

Exchange and Reciprocity



In the 1987 *Lands* case, Justice Cooke described the Treaty as a bargain with two basic terms: the Queen was to govern and Māori were to be her subjects; in return, Māori chieftainships and possessions were to be protected.

The Waitangi Tribunal similarly describes Te Tiriti as **an exchange between equal partners that gives rise to reciprocal duties**. A good example is the quote in this box, which points to all three Articles of Te Tiriti.

“When the Treaty of Waitangi was signed the Crown undertook to protect and preserve Māori rights in lands and resources in exchange for recognition as the legitimate government of the whole country in which Māori and Pākehā had equal rights and privileges as British subjects.”

– Waitangi Tribunal
(1994, p. 68)

The principle that the power of the sovereign might be limited by a charter enforced by the law is very old in Britain. Famously, this is the principle for the [Magna Carta](#) signed in 1215.

If a law includes the principles of the Treaty, the *Lands* decision stated (p. 642) it is the duty of the Court to insist that the Crown honours its duty to the active protection of Māori in the use of their lands and waters to the fullest extent practicable.



Shared Power and Authority

The Waitangi Tribunal paid further attention to the events of 1840 in its [Te Paparahi o Te Raki](#) Inquiry. It heard evidence from claimants and the Crown before publishing its [report](#) in 2014 on what was and was not agreed by rangatira who signed te Tiriti o Waitangi.

The Tribunal's conclusion is that **rangatira did not cede sovereignty**. Rather, te Tiriti is an agreement to share power and authority in different roles and in different *spheres of influence*.

“Our essential conclusion, therefore, is that the rangatira did not cede their sovereignty in February 1840 ; that is, they did not cede their authority to make and enforce law over their people and within their territories. Rather, they agreed to share power and authority with the Governor. They and Hobson were to be equal, although of course they had different roles and different spheres of influence. The detail of how this relationship would work in practice, especially where the Māori and European populations intermingled, remained to be negotiated over time on a case-by-case basis. But the rangatira did not surrender to the British the sole right to make and enforce law over Māori.”

– Waitangi Tribunal (2014, pp. 526-527)

Spheres of Influence



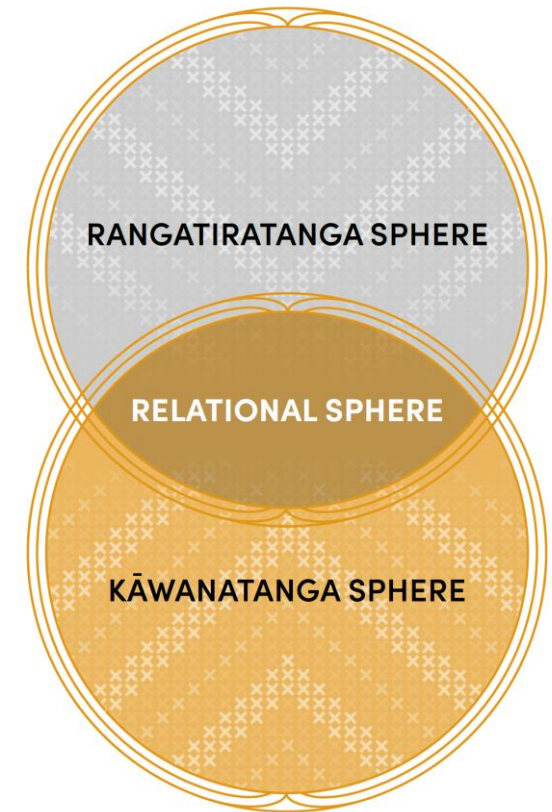
The phrase ‘spheres of influence’ introduced by the Waitangi Tribunal in its 2014 report has become important in conversations on constitutional relations in Aotearoa New Zealand. Recent reports using this concept include:

- [Matike Mai Aotearoa](#) (2016).
- [He Puapua](#) (2019).
- [Maranga Mai!](#) (2022).

These reports suggest three spheres of influence as shown in the quote and diagram here.

“We call those spheres of influence the “rangatiratanga sphere”, where Māori make decisions for Māori and the “kāwanatanga sphere” where the Crown will make decisions for its people. The sphere where they will work together as equals we call the “relational sphere” because it is where the Tiriti relationship will operate. It is the sphere where a conciliatory and consensual democracy would be most needed.”

– Matike Mai Aotearoa (2016, p. 9)



Source: [Maranga Mai!](#) (2022, p. 100)

Water Rights



The dispossession of whenua was a crucial loss of property rights, but other rights also need attention.

The Courts and Waitangi Tribunal, for example, have insisted the Crown must recognise Māori ownership rights to **fisheries**, leading to legislation such as the [Treaty of Waitangi \(Fisheries Claims\) Settlement Act 1992](#).

Ngāi Tahu have also asserted **tino rangatiratanga for water** resources being commercialised.

“The right of the Crown to allow regional governments to issue consents for a resource [water] that was neither purchased by the Crown nor had its customary ownership extinguished needs to be challenged by Ngāi Tahu. The Treaty of Waitangi guarantees the tribe their tino rangatiratanga and aboriginal title to a resource that has not been sold. Tino rangatiratanga means much more than the right to co-manage a resource, and certainly more than guardianship or kaitiakitanga. Tino rangatiratanga means that the chief and hapū have full authority over the resource. Obviously the Crown’s right to govern creates a boundary to tribal authority and chieftainship ... [but] the Crown’s sovereignty can only extend over something it owns, and ownership of water requires a deed of purchase whereby water was ceded.”

– Te Maire Tau (2020, p. 11)

Principles of the Treaty



Since its inclusion in the Treaty of Waitangi Act 1975, ‘principles of the Treaty’ has been frequently used in laws, court judgements and government documents.

Te Puni Kōkiri, for example, published a guide in 2001 for analysts advising on how to apply the principles of the Treaty. The guide is called [He Tirohanga ō Kawa ki te Tiriti o Waitangi](#).

The guide begins with a key point set out in this box.

“The Courts and Tribunal have emphasized that the principles of the Treaty are not set in stone and that they may change as the Treaty partnership evolves. Accordingly, they have not developed an exhaustive list of principles and continue to refine their explanations in response to new circumstances.”

– Hancock and Gover (2001, p. 8)

Two enduring principles come from Articles 1 and 3.

The Crown’s right to govern.

The Crown has the authority to pass laws and make policy (Article 1). The *Lands* case, for example, did not support an unqualified duty to consult, since this could be elusive and unworkable.

Equal Treatment.

The Crown has a duty to ensure its laws and provision of public services (education and health, for example) deliver outcomes that are equitable for Māori and non-Māori residents (Article 3).

Partnership, Protection and Participation



The Royal Commission on Social Policy ([1988](#)) listed three Treaty principles – sometimes called the three Ps – which have been influential in diverse settings.

Partnership.

This principle means the Crown and Māori have a positive duty to act towards each other in good faith, fairly, reasonably and honourably. Some authorities describe this as a *fiduciary* duty; that is, acting in the best interests of the other partner.

Protection.

This is often expressed as the principle of *active* protection, to reflect the duty of the Crown to take positive steps to ensure Māori interests are protected. This is an essential aspect of the exchange agreed by the Treaty partners. Hence, the guaranteed protection of *tinō rangatiratanga* in Article 2 must be honoured. The Preamble and Article 3 contain further references to Crown promises that it will protect Māori rights and privileges.

Participation.

In the Royal Commission report, this term referred to *participation in New Zealand society*. Markedly lower standards of health, housing, education, employment and other aspects of wellbeing reflect lower participation by Māori in decision-making and restricted access by Māori to social provisions designed from narrow cultural perspectives in isolation from Māori tikanga (customary values and practices).

Further Treaty Principles



Further Treaty principles have been found relevant in different contexts. Four are listed here.

Making Informed Decisions.

Although the *Lands* case found no absolute duty to consult, it did affirm that the Crown must ensure decisions are informed with regard to their impact on Māori. This is a key aspect of acting in good faith.

Redress.

It is a general legal principle of partnerships that past wrongs give

rise to a duty of redress. This was a significant consideration in the *Lands* case, which recognised that return of land is an important part of redress for historical breaches.

Mutual Benefit.

Both partners expected benefits from signing Te Tiriti in 1840. Based on that expectation, the Waitangi Tribunal has recognised the principle of mutual benefit. In any particular case, compromise may be required to ensure both parties enjoy reasonable benefits.

The Honour of the Crown.

Both parties have a duty to act in good faith, fairly, reasonably and honourably. When the Crown makes redress to atone for acknowledged injustices, this is [said](#) to restore the honour and integrity of the Crown.

An example is the Crown's public [apology](#) made to Ngāi Tahu at Ōnuku Marae on 29 November 1998.

Mātauranga



The principle of mutual benefit is important in the [relational sphere](#) where the Tiriti partners must collaborate to achieve goals.

A crucial aspect of this relational collaboration is that Māori communities hold **mātauranga** (knowledge) that can contribute to improving public policy for the common good. A good example in practice is the [Vision Mātauranga](#) policy, which has been embedded in New Zealand's research and innovation system since 2005.

There is now a large literature on what Tā Mason Durie termed the **interface** between mātauranga and Western science. An important example is the collected essays in *Ngā kete mātauranga: Māori scholars at the research interface* (Otago University Press, 2021).

A metaphor for the interface from the takiwā of Ngāi Tahu is **he awa whiria** or a braided river (see Macfarlane and Macfarlane 2019). Mātauranga has its own mana and integrity, as does Western science.

Mātauranga and Western science both require human and financial resources to develop their unique contributions to wellbeing. This is an example of the need for [resourcing tino rangatiratanga](#).



Source: Environment Canterbury [website](#).



Budget Secrecy

Te Tai Ōhanga



Te Tai Ōhanga is the reo Māori name for the Treasury. It was announced by the Secretary to the Treasury in March 2019 at an event re-awakening the organisation’s whareniui, Ngā Mokopuna a Tāne.

The Secretary’s [speech](#) described the whareniui as a tangible symbol of the Treasury’s shared obligation under the Treaty of Waitangi as agents of the Māori-Crown relationship and of the Treasury’s responsibilities for kaitiakitanga or system stewardship.

The quotation below is also from that speech. It honours knowledge drawn from Te Ao Māori, as well

as the fundamental values of manaakitanga, kaitiakitanga and whanaungatanga.

“As the whareniui links us to our beginnings and history so too does the knowledge drawn from Te Ao Māori and the exemplar of this fine Whare Taonga. It guides our behaviour and holds us accountable for its care. Its protocols, kawa, ritual and ceremony enrich the Treasury and our guests. It provides knowledge that can help steer our teams, our culture and our insights that link us to our future. And it reinforces the fundamental values of Manaakitanga – Care and Responsibility, Kaitiakitanga – Stewardship and Guardianship, and Whanaungatanga – Relationships and Connections.”

– Gabriel Makhlouf, Secretary to the Treasury, 11 March 2019

The Crown's Annual Budget



Every year, the Treasury works closely with Cabinet and Ministries to prepare the Crown's Budget. The Minister of Finance presents the Budget to Parliament for scrutiny and approval.

The Budget provides detailed information on planned spending and how the spending will be financed from taxes and other sources. The Budget also explains new policies intended by the government to support its overall economic objectives.

The [Public Finance Act 1989](#) sets out strict requirements on how the Budget documents must be presented to Parliament.

The Budget's financial statements, for example, must be prepared in accordance with generally accepted accounting practice.

Further, the Government must pursue its policy objectives in accordance with the **principles of responsible fiscal management** listed in [section 26G](#) of the Act.

Section 26G does not mention the principles of the Treaty.

Some Budgets are associated with significant change; for example:

- Arnold Nordmeyer's Black Budget (1958)
- Roger Douglas's Economic Reforms Budget (1984)
- Ruth Richardson's Mother of All Budgets (1991)
- Grant Robertson's First Wellbeing Budget (2019)

Economic Reforms, 1984 – 1994



To illustrate the importance of the Crown's annual budget, consider New Zealand's economic reforms between 1984 and 1994.

In July 1984, a new government was elected with a mandate to change the previous Government's approach to economic policy. The Budget was delayed that year until 8 November, to give the Minister time to prepare the comprehensive programme of economic reforms that came to be known as **Rogernomics**.

Another change of government in 1990 provided a mandate for further reform. The 1991 Budget announced significant cuts in social security benefits.

Together, these reforms created new economic opportunities, but also saw some New Zealanders left behind, as this quote from MBIE indicates.

“The consequences of these reforms were mixed. The economic slide of New Zealand was halted, but some of New Zealand's intractable social problems, with inter-generational poverty and rural dislocation, can be traced back to this time. Those who were able to adjust and take advantage of the resultant new opportunities prospered, while those who could not were often left behind.”

– MBIE (2019, p. 8)

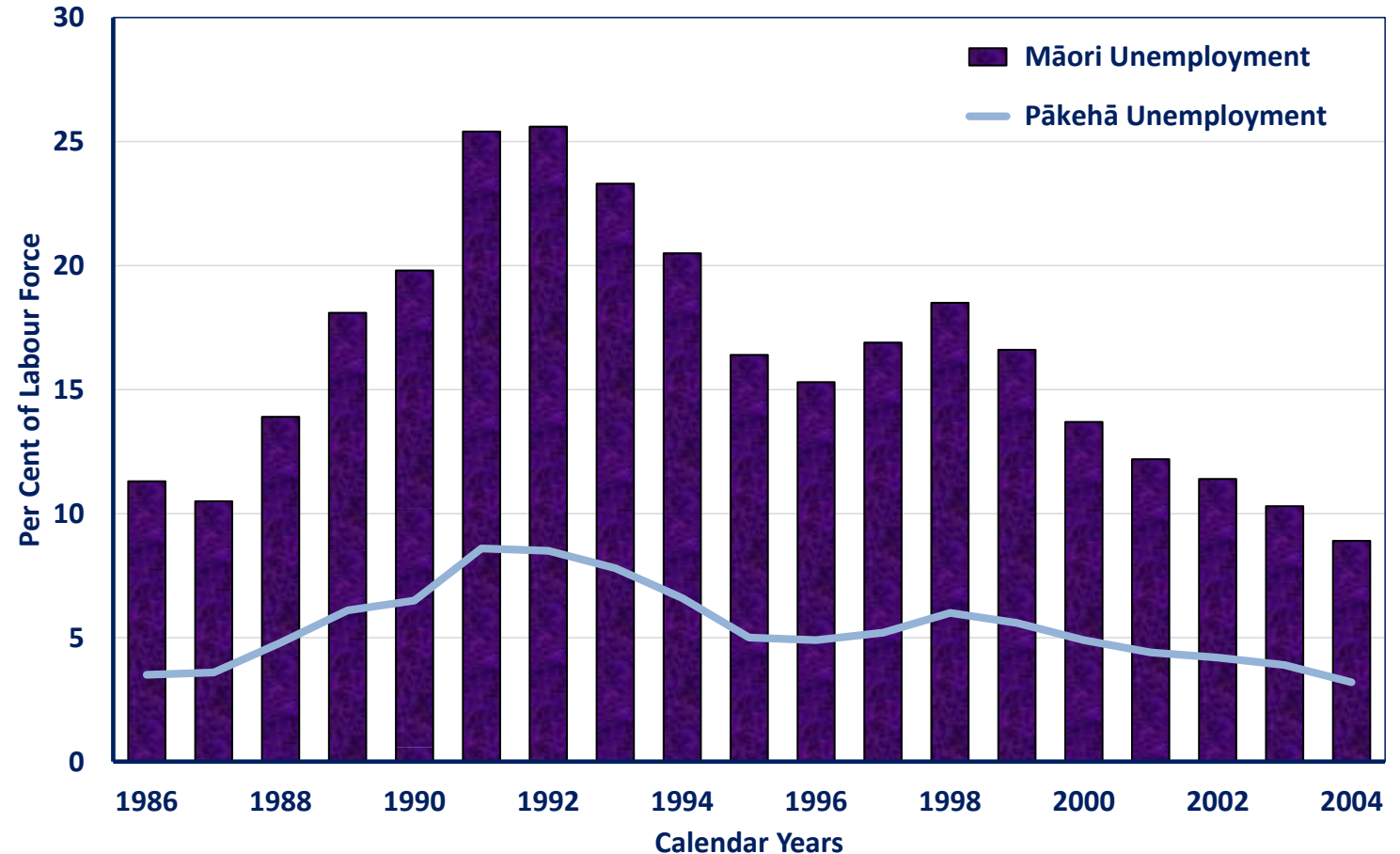
Severe Economic Distress



The economic reforms saw the end of many jobs that had attracted Māori workers to move from rural districts (and Pasifika families from the Islands) into the cities and towns of Aotearoa New Zealand.

The unemployment rate for Māori in the Household Labour Force Survey was **above 25 per cent** in 1991 and 1992. That figure implies severe economic distress; it is, for example, as high as the peak of the [USA unemployment rate](#) during the Great Depression in the 1930s.

Māori Unemployment, 1986 - 2004



Source: Ministry of Social Development, [The Social Report 2016](#).

The Budget Strategy



The first step in the [Budget Process](#) develops an overall strategy. This is published in the [Budget Policy Statement](#) (BPS) which sets out priority wellbeing objectives. There were five in the 2023 BPS (p. 15):

- 1. Just Transition:** supporting New Zealanders to transition to a climate-resilient, sustainable, and low-emissions economy.
- 2. Physical and Mental Wellbeing:** supporting improved health outcomes for all New Zealanders, particularly the

mental wellbeing of our young people.

- 3. Future of Work:** equipping New Zealanders and enabling New Zealand businesses to benefit from new technologies, and lift productivity and wages through innovation.
- 4. Māori and Pacific Peoples:** lifting Māori and Pacific peoples' incomes, skills, and opportunities, including through access to affordable, safe, and stable housing.

- 5. Child Wellbeing:** reducing child poverty and improving child wellbeing, including through access to affordable, safe, and stable housing.

The 2023 BPS included Māori and Pacific Peoples as an example where Crown investment would have a significant impact on enhancing wellbeing over time (p. 17). This is not the same as engaging Māori as Tiriti partners in the Budget process.

Budget Decisions



Once the Strategy is approved, the next step is for Cabinet to decide on the contents of the Budget.

Ministers put forward proposals, which are assessed by Treasury officials with recommendations. These are considered by Cabinet committees and by the Budget Ministers before the final package is approved by Cabinet.

The Treasury and agencies then prepare the Budget documents for presentation to Parliament.

This part of the Budget Process is almost exclusively a matter for Ministers and government departments (the Executive).

It takes place under strict ‘**Budget Secrecy**’.

“A constitutional convention of secrecy has been acknowledged to protect Budget-related information from being required to be disclosed during the preparation phase of the coming Budget.” – McKee (2023, p. 549)

In 2019, an oversight allowed public access to Budget-sensitive material on the [Treasury website](#) two days before the Budget was presented to Parliament.

The State Services Commissioner, [Peter Hughes](#), affirmed the critical importance of budget secrecy:

“This should not have happened,” said Mr Hughes. “Some things are so critical that they can never be allowed to fail. Security of the Budget is one of these.”

Reasons for Budget Secrecy



The long-standing convention of budget secrecy is supported by four considerations.

1. **Responsible Decision-making**

The Crown's annual budget involves decisions about public spending and revenue that have political consequences. Secrecy may help the Budget Ministers make responsible decisions by isolating them from the immediate demands of their colleagues and the general public.

2. **Market Stability**

The Budget may include policy changes that 'shift the market'. Requiring secrecy until Budget Day helps the Government to ensure the markets have all the information needed to assess the total Budget package.

3. **Public Office Integrity**

There must be no suggestion that a person involved in the Budget has leaked a decision to anyone who can benefit from that advance notice.

4. **The Honour of Parliament**

Some argue it is disrespectful to reveal Budget details to the public before presenting them to Parliament, since it is Parliament who must pass the Appropriations Bill for the Budget to be accepted.

Budget Secrecy and Mātauranga Māori



Budget secrecy means decisions are made without accessing the detailed **knowledge** held outside the public sector. Consequently, policies may be less effective than under a more inclusive process.

This has obvious implications for the Tiriti relationship between the Crown and Māori. If its Budget is prepared in secrecy, how does the Crown ensure Budget decisions are informed by knowledge held by Māori, including **mātauranga Māori**, for mutual benefit?

This is relevant for Budget policies intended to impact directly on Māori. The 2023 Budget Policy Statement, for example, included **Māori and Pacific Peoples** as a priority wellbeing objective. Mātauranga Māori is needed to advance that objective.

Mātauranga Māori is relevant, however, for all Budget decisions. As explained in an earlier [slide](#), this is an important application of the principle of mutual benefit in the relational sphere.

In particular, the Parliamentary Commissioner for the Environment has highlighted major conceptual and practical problems in how the budget process considers the natural environment ([PCE 2021](#)).

The Commissioner's report includes an [essay](#) (presented in English and in te reo Māori) by John Reid on how adopting **Māori wellbeing ethics** could improve this and other aspects of the Treasury's Budget process.

Resourcing Tino Rangatiratanga



Article 2 of Te Tiriti guarantees to Māori **tino rangatiratanga** or “the unqualified exercise of their chieftainship over their lands, villages and all their treasures”.

Exercising tino rangatiratanga requires economic resources. In the language of economists, it is a [public good](#). The Crown, however, claims the exclusive right to tax, which therefore restricts the ability of Māori to fund the exercise of tino rangatiratanga themselves (Scobie et al. 2023).

This is a key issue for this project. How does the Crown in its Budget process recognise the need for

resources to support the exercise of tino rangatiratanga by Māori?

“We suggest that constitutional transformation needs to take economic transformation seriously if it is to be just and equitable. The increasing demands on Māori to consult, engage and lead are spreading thin resources thinner and as all aspects of the public, private and third sectors start to take their Te Tiriti obligations seriously, this will increase demands on limited resourcing further. Rangatiratanga must be resourced equitably, and we welcome further discussions about how this might look.”

– Scobie et al. (2023, p. 14)



Conclusion

Summary



Māori first settled in these islands during the 13th century. Europeans first set foot onshore in 1769.

A key historical moment was the signing of te Tiriti o Waitangi in 1840. Under Article 2, the Crown guarantees that Māori will exercise tino rangatiratanga over Māori lands and other prized assets.

The New Zealand Constitution Act 1852 ignored this Tiriti guarantee. Colonisation dispossessed Māori of land and attacked rangatiratanga.

Since the Treaty of Waitangi Act 1975, the Crown recognises it has a duty to honour the principles of the Treaty, enforced by the Courts. This paper highlights:

- The Crown's right to govern
- Equal treatment
- Partnership
- Protection
- Participation
- Making informed decisions
- Redress
- Mutual benefits
- The honour of the Crown

Following the lead of others, this paper recognises three spheres of influence in the Tiriti partnership:

- Rangatiratanga sphere
- Kāwanatanga sphere
- Relational sphere

Every year, the Government prepares the Crown's Budget under conditions of strict Budget secrecy. This practice raises issues for all three spheres of influence.

Issues



The next phase of this project will focus on six issues.

Rangatiratanga Sphere

- How does the Budget process impact on the Article 2 guarantee that Māori will exercise tino rangatiratanga?
- Can the Budget process contribute to resourcing tino rangatiratanga, recognising that the exercise of rangatiratanga is an economic public good?

Kāwanatanga Sphere

- How does the Budget process reflect the Crown's solemn commitment to respect the principles of the Treaty?
- Should the principles of responsible fiscal management listed in section 26G of the Public Finance Act 1989 refer to the principles of the Treaty?

Relational Sphere

- Given Budget secrecy, how does the Budget process leverage opportunities for collaboration with Māori for mutual benefit?
- Given Budget secrecy, how does the Budget process respectfully access mātauranga Māori, including mātauranga on environmental kaitiakitanga?

Invitation to Participate



The authors welcome comments on this Issues Paper. We invite individuals and organisations to share with us mātauranga and knowledge, as we explore options for future pathways.

The person collating responses in the first instance is Paul Dalziel. He will respond to emails sent to the following address:

Paul.Dalziel@wellbeingeconomics.nz



Glossary



Te Reo words used in this paper (1)

The English translations draw on definitions in the Te Ake Māori Dictionary available [here](#).

Hapū: Kinship group, clan, subtribe.

Hauora: Health, vigour.

He awa whiria: A braided river.

Hīkoi: Step, march, journey.

Hui: Gathering, meeting, assembly.

Kainga nohoanga: Places of residence.

Kaitiakitanga: Guardianship, stewardship, trusteeship.

Kawa: Marae protocol – customs of the marae and wharenuī.

Kāwanatanga: Government, dominion, rule, authority.

Kīngitanga: Chieftainship, right to exercise authority, chiefly autonomy.

Mahinga Kai: Garden, cultivation, food-gathering place.

Mana: Prestige, authority, control, power, influence, status, spiritual power, charisma.

Te Reo words used in this paper (2)



Mana whenua: Territorial rights, power from the land, authority over land or territory, jurisdiction over land or territory - power associated with possession and occupation of tribal land.

Manaakitanga: hospitality, kindness, generosity, support – the process of showing respect, generosity and care for others.

Marae: The open area in front of the wharenui.

Mātauranga: Knowledge, wisdom, understanding, skill.

Ngā Mokopuna a Tāne: The grandchildren of Tane, name of the wharenui at the Treasury.

Pākehā: New Zealander of European descent.

Rangatira: Chief (male or female).

Rangatiratanga: Chieftainship, right to exercise authority, chiefly autonomy.

Raupatu: Confiscation, especially of land taken by force.

Reo: Language; Te Reo refers to the Māori language.

Tā: Sir.

Takiwā : District, area, territory, vicinity, region.

Te Reo words used in this paper (3)



Tangata whenua: Local people, hosts, indigenous people.

Taonga: Treasury, anything prized.

Te Ao Maori: Māori world view.

Te Tai Ōhanga: Te reo Māori name for the Treasury.

Tikanga: The customary system of values and practices that have developed over time and are deeply embedded in the social context.

Tino rangatiratanga: Self-determination, sovereignty, autonomy, fullness of control.

Tiriti: Treaty.

Wai: Water.

Whanaungatanga: Relationship, kinship, sense of family connection.

Wharenui: Meeting house.

Whenua: Land.



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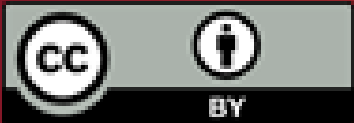


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